

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

<p><b>Kelly &amp; Anne Payne and Richard J. Hrabak,</b> Petitioner-Appellants,</p> <p>v.</p> <p><b>Humboldt County Board of Review,</b> Respondent-Appellee.</p>	<p style="text-align: center;"><b>ORDER</b></p> <p><b>Docket No. 09-46-0132 Parcel No. 1011227001</b></p> <p><b>Docket No. 09-46-0133 Parcel No. 1011227002</b></p> <p><b>Docket No. 09-46-0134 Parcel No. 1011227003</b></p> <p><b>Docket No. 09-46-0135 Parcel No. 1011227004</b></p> <p><b>Docket No. 09-46-0136 Parcel No. 1011227005</b></p> <p><b>Docket No. 09-46-0137 Parcel No. 1011227006</b></p> <p><b>Docket No. 09-46-0138 Parcel No. 1011227007</b></p> <p><b>Docket No. 09-46-0139 Parcel No. 1011227008</b></p>
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On March 9, 2010, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellants, Kelly and Anne Payne, and Richard Hrabak, requested a hearing and submitted evidence in support of their petition. Attorney Eric Eide of Fort Dodge, Iowa, represented the appellants. The Board of Review designated Attorney Brett Ryan of Willson & Pechacek, P.L.C., Council Bluffs, as its legal representative. The Board of Review submitted documentary evidence in support of its decision. A digital record of the proceeding was

made. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

### *Findings of Fact*

Appellants Kelly and Anne Payne, and Richard Hrabak, owners of property located at 700 13th Street South, Humboldt, Iowa, appeal from the Humboldt County Board of Review decision reassessing their property. According to the property record cards, the subject properties are eight two-bedroom and one-bath condominium units built in 1968. The properties have a 30% physical depreciation and a 4+00 quality grade. Each unit has 888 square feet of living area, a brick exterior, and a one-car, detached garage. Appellants acquired the eight properties as one eight-plex apartment building in 2006 for \$285,000. The property was then converted from a commercial apartment building to a condominium regime organized under Iowa Code Chapter 499A in 2008. The units are not separately metered for utilities. They are all held in common ownership by Appellants and are individually rented out. Each of the eight parcels was classified as residential on the initial assessment of January 1, 2009, and valued at \$54,240, representing \$4460 in land value and \$49,780 in improvements.

Appellants protested to the Board of Review on the ground that the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(b). They claimed \$40,000, allocated \$4460 to land value and \$35,540 to improvement value, was the actual value and a fair assessment of each condominium. The Board of Review granted the protest, in part, and reduced each assessment to \$49,520, allocated \$4460 to land value and \$45,060 in improvement value.

The values were as follows:

Docket No.	Parcel	AV Land	AV Imp	AV Total	BOR Land	BOR Imp	BOR Total
09-46-0132	1011227001	\$ 4,460	\$ 49,780	\$ 54,240	\$ 4,460	\$ 45,060	\$ 49,520
09-46-0133	1011227002	\$ 4,460	\$ 49,780	\$ 54,240	\$ 4,460	\$ 45,060	\$ 49,520
09-46-0134	1011227003	\$ 4,460	\$ 49,780	\$ 54,240	\$ 4,460	\$ 45,060	\$ 49,520
09-46-0135	1011227004	\$ 4,460	\$ 49,780	\$ 54,240	\$ 4,460	\$ 45,060	\$ 49,520
09-46-0136	1011227005	\$ 4,460	\$ 49,780	\$ 54,240	\$ 4,460	\$ 45,060	\$ 49,520
09-46-0137	1011227006	\$ 4,460	\$ 49,780	\$ 54,240	\$ 4,460	\$ 45,060	\$ 49,520
09-46-0138	1011227007	\$ 4,460	\$ 49,780	\$ 54,240	\$ 4,460	\$ 45,060	\$ 49,520
09-46-0139	1011227008	\$ 4,460	\$ 49,780	\$ 54,240	\$ 4,460	\$ 45,060	\$ 49,520

Appellants then reasserted their claim before this Board. They report that when the properties were converted to condominiums and reclassified residential, the assessments doubled.

Kelly Payne testified on behalf of Appellants that the property units are not separately metered for utilities, except electric, and rent for \$485 to \$500 monthly. When the property was purchased in 2006 as an apartment building, he was advised by the appraiser that their purchase price was “on the high side of the market” indicating they may be paying more than what the properties were worth. Payne stated he was shocked by the increase in the assessment, testifying that it basically doubled after conversion to condos without any physical changes to the building or a market change. Appellants contend the increase in the assessments was a means of recapturing the real estate tax loss from the residential rollback benefit of the condominium conversion.

Appellants offered three appraisals all by Matt Johnson, of Johnson Appraisal Services in Fort Dodge. The first appraisal, dated March 2, 2006, was a restricted appraisal completed for lending with United Bank of Iowa. The income and sales approaches were developed. The property was valued as a commercial/multifamily rental with one single value of \$272,000, and allocated a value of \$34,000 per apartment unit.

The second Johnson appraisal was completed on January 22, 2009, for lending with Northwest Bank. In that appraisal, Johnson valued the property by the cost approach at \$291,399, the income approach at \$275,000, and the sales approach at \$280,000, noting that resale data was extremely



limited due to limited recent sales of similar multi-family properties in Humboldt. His final reconciliation of value of \$280,000, estimated a value of \$35,000 per unit; but the value of the entire complex was based on its use as a commercial multifamily rental property.

Both of the March 2006 and January 2009 appraisals valued the property as a commercial apartment building. Neither separately examined the individual residential units in the approaches to value. Because each unit is to be valued separately by law, we do not find them relevant evidence for this appeal. Likewise, the evidence documenting Appellants' 2006 purchase of the property for \$285,000 is not probative of the issue of the units' individual January 1, 2009, fair market value.

Johnson completed a third appraisal on April 28, 2009, based on an individual two-bedroom and one-bath unit, reflecting the conversion of the property to a residential condominium regime. This change of ownership form was the basis of the January 1, 2009, reassessment. Lacking any recent sales of comparable condominiums in Humboldt, he used four sales in Fort Dodge, some thirteen to fifteen miles away. We note downward adjustments for location of approximately \$4,000 and for a pool amenity of \$1,000 on three of the four comparable sales. Three of the sales were in the Coachlight Condo project on the north side of Fort Dodge, and one was a sale in the Westridge Condo project on the west side of Fort Dodge. Johnson made adjustments for gross living area, functional utility, location, common elements, and garages. Adjusted sale prices of the units were \$31,640 to \$45,855. Johnson used a weighted average of all four comparable sales to arrive at a value of \$40,000 for each unit. He used a computerized weighting system that may not be in accord with appraisal standards and could skew the value, but it did result in his opinion of value. Johnson also developed an income approach valuing the entire complex at \$306,000.

Johnson testified on behalf of Appellants. His experience includes ten years of appraisal work in the Fort Dodge area, work as a real estate broker, and as a property investor. In his opinion, the income and sales approaches to valuation were best suited to value the properties. He uses an income

analysis because he believes it is important to buyers of a multi-unit rental property. He reported that his third, most recent appraisal of the individual residential condominiums produced a higher value. In his opinion, the subject properties are better suited for use as apartments, not condominiums. He believes the properties have limitations for condominium use from a design standpoint, and they have limited marketability because of a lack of secondary market financing. None of this changes the fact that the law requires them to be valued as individual units. Johnson reports the best indicator of value is the past sale price of the properties, which he considered the "top end of the market," and in his opinion, the market is currently not as strong as it was three years ago when the properties were purchased. While we find Johnson's testimony credible, we do not agree that the three year old purchase of the subject properties as a commercial apartment unit is the best indicator of value of the residential condominiums for January 1, 2009.

Appellants also offered an opinion of value authored by real estate agent Craig Patterson of RE/MAX in Fort Dodge dated May 8, 2009. Based on his market analysis, he opines that the value of one-bedroom and two-bedroom units between 850 and 925 square feet ranges from \$35,000 to \$42,000.

In addition to sales information, Appellants provided rent rolls, income/expense summaries, and a 2008 income tax schedule for the subject properties; both historically since the 2006 purchase and for a one-year period from September 2008 through September 2009. Since the income data reflected the combined revenue for all units rather than on a per-unit basis, the income approach was not fully developed and comparable sales data of individual units was available, we do not rely on this evidence.

Finally, an affidavit of real estate agent Marlene Thompson states she has written a listing agreement for the units collectively offered for sale at \$320,000. In Thompson's opinion the market for the properties is in the range of \$175,000 to \$250,000. She reports the only interest in the property



has been for investment with the intent to rent each of the individual units, if purchased. She estimates the market value of two-bedroom units at \$30,000.

The Board of Review offered an appraisal prepared by Jason L. Heinz of Heinz Appraisal, L.L.C., in Humboldt, dated January 6, 2010. The subject property of the appraisal is an 888 square-foot, two-bedroom and one-bath condominium identified as the Main Level NW unit in the 700 13th Street South building. Heinz inspected the property in December 2009 and reported the property was in good-average condition, needed no immediate repairs, and was above-average quality. He states no measurable functional obsolescence was indicated. He indicates, "property values have tended to increase over the past few years mostly due to lower interest rates." Heinz also indicated at the time of the appraisal, property values were stable and supply was generally in balance with demand.

Heinz used seven condominium sales: four in Fort Dodge and three in Algona. He noted sales that were more than six months old were used because the properties were of similar style, effective age, and size. Two of the sales used occurred after the effective date of the appraisal. No time or location adjustments were calculated. The appraiser adjusted the sales for gross living area, condition, functional utility, garage, porch, and other amenities resulting in net adjustments of -6.3% to 37.5%. Adjusted sales prices ranged from \$58,000 to \$64,000. Using this sales approach, he valued the subject property at \$56,000 as of January 1, 2009.

The Board of Review submitted an income and expense summary for April 2006 through August 2009 showing net loss of \$18,493.37. Because the income approach was not fully developed and it contained deductions unrelated to assessment valuation, we find this information did not provide a useable indication of value. Also submitted was an insurance cover page indicating the entire complex was insured for \$818,900 and the eight detached garages for \$57,635. Likewise, this information lacked probative value because the entire building and all garages were collectively insured for the full replacement cost of the complex. There simply was no per unit valuation.

County Assessor Linda Fallesen testified the January 1, 2006, value of the whole complex when Appellants purchased the property and it was classified as a commercial property was \$236,210. Fallesen testified the property was revalued because of its change from commercial to residential property. In 2009 after the property was converted to condominiums, the individual units were assessed at \$54,240, which was subsequently lowered to \$49,520 per unit by the Board of Review. The Board of Review assessment of all eight units combined would be the equivalent of \$396,160.

Fallesen indicated the individual units were split out and priced as condominiums on a Computer Assisted Mass Appraisal (CAMA) schedule by the Vanguard System using the 1998 *Iowa Real Property Appraisal Manual*. She said the size, fixtures, and amenities were entered into the computer program based on commercial sales. Fallesen was not otherwise knowledgeable about how the reevaluation was conducted and reported an outside firm appraised the county's condominiums. She was unable to give a plausible explanation for the automatic increase in value accompanying the residential conversion. We find it unreasonable the assessor had such limited knowledge of the assessment procedure used. Additionally, the properties were improperly valued as a whole then values were allocated to the individual units. She testified all residential properties were raised 10% and all commercial properties were raised 6% for 2009, which was necessary to prevent equalization orders for these classes of property. This county-wide increase was only a partial reason for the significant increase in the 2009 subject property assessments.

Fallesen also testified after the initial Board of Review hearing, she found additional sales in Storm Lake and Fort Dodge, which were shared with the Board of Review in a subsequent discussion without Appellants present. We are concerned that this procedure unfairly disadvantaged the property owners who were not aware of the supplemental evidence and had no opportunity to defend against it.

Reviewing all the evidence, we find it substantiates Appellants' claim that their property is assessed for more than authorized by law. We find Johnson's April 2009 appraisal is the most credible



evidence of the fair market value of the subject properties as of January 1, 2009, because it arrives at a per unit conclusion of value and uses sales of comparable properties closest to the assessment date. The appraisal also made reasonable adjustments to the comparables to account for differences between those and the subject, particularly location.

### *Conclusion of Law*

The Appeal Board applied the following law in this case.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds present to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, or the market value "cannot readily be established in that manner," "other factors" may be considered in arriving at market value. *Heritage Cablevision v. Bd. of Review of City*



of *Mason City*, 457 N.W.2d § 594, 597 (Iowa 1990), §441.21(2). The assessed value of the property “shall be one hundred percent of its actual value.” § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa code section 441.37(1)(b), there must be evidence the assessment is excessive and of the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 592 N.W.2d 275, 277 (Iowa 1995). When property is converted to a horizontal property regime, each individual apartment located in the building constitutes a separate parcel which must be separately valued. *Dinkla v. Guthrie County Bd. of Review*, 723 N.W.2d 453 (Iowa Ct. App. 2006) (citing Iowa Code § 449B.10-11(1)). Although the subject property sold in 2006, this price reflects the properties’ value as a commercial apartment building. In this case, the subject properties’ prior sale and earlier appraisals of the property fail to reflect the market value of individual residential condominium units. For this reason, we do not rely on the 2006 sale of the subject properties, nor do we rely on the appraisals that value the properties prior to their conversion to condominiums. Of the two remaining appraisal in the record: Johnson’s third appraisal and Heinz’s appraisal, we find the Johnson appraisal more credible. As previously stated, the sales used by Johnson are more recent (closest to the assessment date) and he makes adjustments for location, among other things.

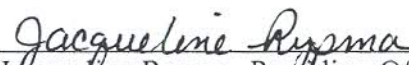
Viewing the evidence as a whole, we find support for Appellants’ claim of over-assessment. The April 2009 Johnson appraisal, also supported by the May 2009 Patterson value opinion, provides persuasive evidence of the January 1, 2009, fair market value of the units individually. The Appeal Board, therefore, modifies January 1, 2009, property assessments as follow:

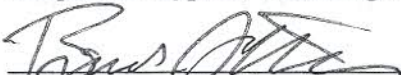
Docket No.	Parcel	PAAB Land	PAAB Impr	PAAB Total
09-46-0132	1011227001	\$ 4,000	\$ 36,000	\$ 40,000
09-46-0133	1011227002	\$ 4,000	\$ 36,000	\$ 40,000
09-46-0134	1011227003	\$ 4,000	\$ 36,000	\$ 40,000
09-46-0135	1011227004	\$ 4,000	\$ 36,000	\$ 40,000
09-46-0136	1011227005	\$ 4,000	\$ 36,000	\$ 40,000
09-46-0137	1011227006	\$ 4,000	\$ 36,000	\$ 40,000
09-46-0138	1011227007	\$ 4,000	\$ 36,000	\$ 40,000
09-46-0139	1011227008	\$ 4,000	\$ 36,000	\$ 40,000

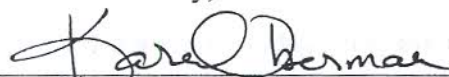
THE APPEAL BOARD ORDERS the January 1, 2009, assessments as set by the Board of Review are modified as set forth above.

The Secretary of the Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Humboldt County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 27 day of April 2010.

  
Jacqueline Rypma, Presiding Officer

  
Richard Stradley, Board Member

  
Karen Oberman, Board Chairman

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>4-27</u> , 201 <u>0</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u></u>